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December 19, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231*

Dear Ms. Salas:

Accompanying this letter please find an original and sixteen copies of the Reply in Support of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, as well as electronic copies of the reply brief and the supporting reply affidavits in both WordPerfect 5.1 and their original format (either Wordperfect or Word). Eleven of the paper copies are for the Office of the Secretary and five are for the Common Carrier Bureau.

Please date stamp the extra copy of this letter and return it to the individual delivering this package. Thank you for your assistance in this matter.

Sincerely,

Austin C. Schlick

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 97-231

To: The Commission

REPLY BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA

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December 19, 1997

EXECUTIVE SUMMARY

Nearly all commenters agree that when the local market in Louisiana is open to competition, BellSouth should be allowed to provide interLATA services in the State. Once competitors have a chance to enter the local market, there cannot be any basis for denying consumers the lower long distance prices that indisputably will result from BellSouth's entry.

The core issue in this proceeding, then, is how the Commission should determine whether BellSouth's local markets are open. Should it respect the findings of the Louisiana PSC, which has decades of experience with those markets and spent nine months actively investigating the question? Should it defer instead to the views of the Department of Justice ("DOJ") which has briefly summarized allegations of AT&T and MCI rather than independently assessing the record generated by the Louisiana PSC and the evidence filed by BellSouth? Or should it rely on the positions of CLECs themselves, who are motivated purely by self-interest and expressly argue that the Commission should not consider "'Louisiana markets and . . . what's best for Louisiana'"? AT&T at 2.

The Commission need only follow the 1996 Act to reach the correct result. Congress chose the 14-point competitive checklist, hammered out during a year of negotiations in which all industry and consumer groups were represented, as the definitive "test of when markets are open." 141 Cong. Rec. S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler). It forbade the Commission from expanding the test, as DOJ and CLECs now propose. 47 U.S.C. § 271(c)(4). It required consultation with the appropriate state commission "in order to verify" satisfaction of section 271's local competition requirements. 47 U.S.C. § 271(d)(2)(B). It rejected efforts by DOJ to claim a regulatory role over local markets, cognizant that DOJ had

demonstrated, during its years of quasi-regulatory responsibility under the MFJ, "a lack of expertise and understanding of the way telecommunications markets operate" and an inability to adhere to "orderly procedure." H. Rep. 104-204, at 207-08 (1995) (additional views of Reps. Dingell, Tauzin, Boucher, and Stupak).

If the Commission follows the statute, it will grant BellSouth's Application upon a finding of compliance with the specific checklist requirements, a conclusion the Louisiana PSC has already reached and which is supported by tens of thousands of pages of detailed evidence. If, however, the Commission continues its quest for some further standard of "openness" beyond the one picked by Congress, consumers and competition alike will suffer.

Any search for an improvement upon the checklist will be in vain, as DOJ's Evaluation illustrates. In its fourth try at applying an "irreversibly open" standard, DOJ has once again failed to set out anything close to a comprehensive or even comprehensible roadmap for Bell company interLATA entry. DOJ has made no pretense of considering the actual availability of most checklist items in Louisiana. In fact, the only thing that is clear about DOJ's standard is that it would install DOJ as overseer of the state commissions' local pricing policies and arbitrator of carrier negotiations on any matters deemed important by DOJ. Congress denied DOJ these powers, concluding that the state commissions are the proper guarantors of the public interest. Moreover, as a practical matter, DOJ has no experience in the area of local telecommunications (which has always been regulated by the states) and no institutional legitimacy when it seeks to intrude upon such core state policy issues as rate rebalancing.

If this Commission abandons the checklist as the authoritative standard for open local markets, there also will be no boundaries to section 271 proceedings. CLECs maintain that in-region, interLATA relief cannot be granted to any company until all questions concerning implementation of the 1996 Act are resolved. This ignores that Bell companies will be subject to whatever rules commissions or courts eventually establish after proper proceedings. Section 271 does not in any event authorize omnibus federal proceedings on local competition.

Even putting aside its legal and procedural infirmity, the strategy proposed by DOJ and CLECs will not work. DOJ and CLECs propose that acquiescence in federal regulators' schemes should be a prerequisite to interLATA competition. But neither Bell companies nor state commissions will participate in a shell game: There must be clear, definite, and attainable criteria for interLATA relief. Moreover, if regulators somehow succeeded in designing the perfect local market by means of section 271, they could not force CLECs to enter. Indeed, the CLECs that argue most vociferously for expansion of the checklist (such as AT&T and MCI) are the least likely to enter the local telephone business. Opposition to BellSouth's Application is prompted principally by a desire to limit BellSouth's ability to compete in long distance, not an interest in local markets. Thus, there is no guarantee that granting CLECs their wish lists, instead of enforcing the checklist as written, will cause any additional local entry.

Finally, seeking to rewrite the Act's local competition provisions through section 271 will frustrate one of the Commission's central goals: ending "backward-looking, competition-

inhibiting litigation" and letting "businesspersons solv[e] economic and technological policies."[1] Misuse of section 271 will lead to a new round of court appeals that freezes local and interLATA competition; even if the Commission's positions were upheld, micro-managing local markets would keep competition in the hands of regulators and lawyers. By contrast, a clear interpretation of the checklist requirements, and a clear statement that these requirements are the rules of the road for local competition, will let the businesspeople take over.

BellSouth has satisfied all preconditions for interLATA competition in Louisiana. BellSouth may file under Track A for two reasons. First, as KMC TeleCom suggests in its Comments, that company provides business and residential telephone exchange service predominantly over its own wireline facilities in Louisiana. Second, while commenters question whether PCS is a substitute for wireline telephone service in an antitrust sense, they do not seriously dispute that consumers are subscribing to PCS as an alternative to BellSouth's wireline service, or that PCS is price-competitive with wireline service for thousands of BellSouth customers in Louisiana.

BellSouth offers interconnection and network access in accordance with all fourteen requirements of the competitive checklist. Although BellSouth has not acceded to every negotiating demand of every CLEC, it has made legally binding commitments to provide every checklist item in accordance with the Act's requirements. Wherever CLECs have been ready to

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[1] Press Statement of Commissioner Susan Ness Regarding State Challenge to FCC's Ameritech Michigan Order, Sept. 17, 1996; Reed Hundt, The Light at the End of the Tunnel vs. The Fog: Deregulation vs. The Legal Culture, Speech before the American Enterprise Institute, Aug. 14, 1997.

take advantage of these offerings, BellSouth has furnished them on nondiscriminatory terms that allow efficient CLECs to compete.

BellSouth will enter the interLATA market in compliance with section 272. Opponents of BellSouth's application offer no contrary evidence, but merely seek to convert the requirement of future compliance with section 272 into a current barrier to long distance competition.

Finally, BellSouth's entry into the interLATA services market will increase competition and thereby serve the public interest. Arguments to the contrary rest on the incorrect premise that fulfilling CLECs' wish lists is more important than saving consumers billions of dollars per year on their long distance bills. That is wrong as a matter of law, for the CLECs' demands are beyond the bounds of the 1996 Act. And it is wrong as a matter of policy, because giving CLECs greater advantages than Congress intended will not cause them to revise their plans to serve only profitable business customers. This Commission should side with consumers and the Louisiana PSC and let competition go forward.

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In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 97-231

To: The Commission

REPLY BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA

This proceeding is supposed to be governed by the specific statutory criteria of 47 U.S.C. § 271(d)(3). One would never know it. Barely touching upon the words of the Act, or even the Commission's enforceable interpretations of it, CLECs have seized upon the Michigan Order's open invitation to "identify other factors" that should be stacked on top of Congress's test.[2] These include essentially every issue that has been resolved against any CLEC by Congress, state commissions, or federal courts. Nor are CLECs constrained by their past positions: they have dreamed up new demands since commenting on BellSouth's application for interLATA relief in South Carolina just a few weeks ago and surely will invent additional "requirements" in future section 271 proceedings.

[2] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298, ¶ 398 (rel. Aug. 19, 1997) ("Michigan Order").

The Department of Justice gamely plays along. Without differentiating actual statutory requirements from its own seat-of-the-pants standard, DOJ repackages some of the large CLECs' assertions as an "Evaluation," and then insists upon deference. This Commission, however, need not defer to DOJ's recitations of complaints made by private parties. Moreover, in those few areas where DOJ purports to do independent analysis that might be accorded "substantial weight," 47 U.S.C. § 271(d)(2)(A), the independence of its conclusions is highly suspect. In particular, DOJ places principal reliance upon assessments by two retained consultants without acknowledging — or perhaps without knowing — that its consultants simultaneously are CLEC representatives.[3]

At bottom, neither CLECs nor DOJ provide this Commission with any basis for doubting that BellSouth's satisfaction of the competitive checklist opens local markets to competition. Nor is there any genuine dispute that once the local market is open, granting BellSouth in-region, interLATA relief will serve the public interest. It follows that this Commission should completely apply the checklist criteria Congress established and, once it finds them and the other specific statutory criteria satisfied, open the interexchange market in Louisiana to full competition. BellSouth welcomes this analysis.

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[3] Marius Schwartz, DOJ's economist, recently appeared before Commission staff on behalf of AT&T, apparently arguing for restrictions on entry into AT&T's markets. Ex Parte Letter from Kristen C. Thatcher, AT&T, to William F. Caton, Docket No. IB 97-142 (Oct. 27, 1997). DOJ's technical consultant, Michael Friduss, counts "new local service providers" — i.e., CLECs — among his clients. Friduss South Carolina Aff., DOJ Evaluation Ex. 3 ¶ 11.

Conversely, section 271 must not become a catch-all vehicle for considering every contested issue that arises between CLECs and incumbent LECs, whether or not found in the checklist. The issues raised by CLECs in this proceeding overwhelmingly are to be resolved by the states and the courts, not by this Commission in section 271 proceedings. If the Commission falls into the trap of seeking to resolve every conceivable dispute about local competition, there will be no end to the section 271 process. Long distance consumers will pay more; incumbent long distance carriers will stay out of local markets to make them appear closed and thereby protect their interexchange profits; and the pro-competitive policies of state commissions across the country will be frustrated.

This Commission should open interLATA markets to full competition as soon as local markets are themselves open in accordance with the criteria established by Congress, then let market forces work. The state commissions will retain their powers to ensure the openness of local markets under the Communications Act, while this Commission will be able to police Bell company interLATA entry pursuant to the enforcement mechanisms of section 271(d)(6), among other powers. Approval of BellSouth's pending applications for interLATA relief in South Carolina and Louisiana would be the best way to start down this course and thereby serve the public interest.

DISCUSSION

I. THE LOUISIANA PSC'S VERIFICATION OF BELLSOUTH'S COMPLIANCE WITH THE CHECKLIST DESERVES DEFERENCE

State commissions possess "a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition." Michigan Order ¶ 30. Congress recognized that "unique ability" and accordingly gave the state commissions a special role in advising the Commission on local competition matters pursuant to section 271(d)(2)(B).

The Louisiana PSC has satisfied its statutory obligation by conducting a thorough and careful review of BellSouth's application. It established a docket solely to review BellSouth's application, collected extensive evidence through written data requests and depositions of witnesses, and reviewed the pre-filed testimony of witnesses. Louisiana PSC at 1, 3-4. The Louisiana PSC allowed all interested parties to participate in its hearing, including parties who failed to intervene in a timely manner. Id. at 3, n.1. The PSC's decision was based on a nearly 6,200 page record that included over 3,800 pages of testimony. See App. D at Tab 1. In concluding that BellSouth's application "satisfies the Act's requirements and serves the public interest," Louisiana PSC at 7, the Louisiana PSC produced exactly the sort of "detailed and extensive record" the Commission called for in its Michigan Order. Michigan Order ¶ 30.

Predictably, CLECs that had the opportunity to participate in the state proceedings, but failed to persuade the Louisiana PSC to adopt their positions, attempt retrospectively to fault the Louisiana PSC's procedures. For example, AT&T ominously accuses the Louisiana PSC of having an "agenda." AT&T at 2. The "agenda" AT&T finds so objectionable, however, is the

Louisiana PSC's commitment to assess BellSouth's application in light of "Louisiana markets" and "what's best for Louisiana." Id. (quoting Louisiana PSC commissioner). While AT&T finds this regard for the interests of Louisianians objectionable, it highlights precisely why Congress assigned state commissions a critical role in the section 271 process.

Turning to specific procedures of the Louisiana PSC, AT&T and MCI complain that the PSC declined to follow the recommendation of its ALJ. Id. at 39; MCI at 53. Contrary to CLEC insinuations, there is nothing improper about a state commission declining to follow the recommendation of an ALJ. State commissions do not merely "rubber stamp" the recommendations of ALJs, but review full factual records. Furthermore, in the instant case, the ALJ did not have the benefit of critical evidence that was considered by the state commission, as she herself acknowledged. In particular, the pricing dockets that the Louisiana PSC had instituted to determine BellSouth's cost-based rates for interconnection and UNEs were incomplete at the time that the ALJ made her July 9, 1997 recommendation, Louisiana PSC at 6, and the ALJ's recommendation concerning access to BellSouth's OSSs did not benefit from the tests of BellSouth's systems that were conducted by the Louisiana commissioners. See id.; App. C at Tabs 111, 131.

The Louisiana PSC's technical demonstration of BellSouth's OSSs put the opposing claims of CLECs and BellSouth to the test, and the claims of CLECs were revealed to be incorrect. Accordingly, CLECs that offered no objection to this test prior to its execution now claim it should be disregarded. Cox, for instance, contends that it was denied an opportunity to

participate, but in the very next sentence concedes that it was able to present "concerns" at the "invitation of a Louisiana PSC Commissioner." Cox at 10.

MCI sweepingly asserts that the Louisiana PSC "did not even consider the issues of checklist compliance" presented in BellSouth's application. MCI at 11. This is simply not true. As the Louisiana PSC set out in some detail in its comments to this Commission, the state commission conducted a "thorough analysis" of the checklist, in which it addressed each item as part of its review of BellSouth's application. Louisiana PSC at 9-19. MCI confuses the Louisiana PSC's rejection of CLEC arguments with a failure to consider these arguments.

ALTS asserts that because the state commission's decision "was 3-2" it is somehow entitled to less weight. ALTS at 15. This assertion betrays a fundamental misunderstanding of the binding authority of administrative decisions. Nor are the comments of individual commissioners dispositive, since it is the state commissions, and not its members, with whom the Commission must consult. 47 U.S.C. § 271(d)(2)(B).

In an additional attempt to avoid the Louisiana PSC's conclusions, CLECs offer a new version of the "pick and choose" rule: they encourage the Commission to rely only on those state commissions with which they agree, while dismissing or ignoring state commissions that have reached decisions favorable to BellSouth. This approach is impossible to defend where only one state commission is knowledgeable about telecommunications markets in Louisiana, and only it is charged with "verify[ing]" BellSouth's compliance with the checklist in Louisiana 47 U.S.C. § 271(d)(2)(B).

CLEC objections to the Louisiana PSC's investigation are purely result-driven. To disregard the conclusions of the Louisiana PSC, or to lump them together with the opinions of other state commissions without acknowledging the Louisiana PSC's unique role and thorough investigation in fulfillment of that role, would run afoul of section 271(d)(2)(B) and improperly impose a requirement of state unanimity, in violation of the intent of Congress.

II. BELLSOUTH IS ELIGIBLE TO APPLY FOR INTERLATA RELIEF UNDER SECTION 271(c)(1)

Section 271(c)(1) has become a game of cat and mouse, whereby CLECs try to hide their actual steps to enter the local market while making vague assertions that could be used to counter an application under either Track A or Track B. Consider ACSI's comments in this proceeding. ACSI says that it "currently provides local switched services to hundreds of customers with thousands of lines in Louisiana." ACSI at 4. ACSI also acknowledges that it is furnishing resale service in Louisiana. Id. at 32. ACSI further states that it "will welcome profitable opportunities" to serve residential customers. Id. at 5. Yet ACSI carefully avoids indicating whether any of its current customers are residential subscribers, or how many facilities-based and resale customers it serves in Louisiana.

Such calculated omissions are, of course, designed to deny this Commission the information it would need to make a determination that BellSouth satisfies Track A or Track B. They flout admonitions in the Michigan Order that CLECs should provide specific information regarding such issues as the number of access lines they serve. Michigan Order ¶ 66 n.143 & ¶ 76 n.168.

It is time for the Commission to put a stop to CLECs' gamesmanship and take effective steps to collect this critical information. In this proceeding, the Commission should require CLECs to submit on the record (under seal if necessary) any relevant information that may have been presented to the Commission in the numerous, poorly reported ex parte meetings that have occurred between CLECs and the Commission staff. In future proceedings, CLECs who wish to participate in a section 271 proceeding should be required to detail the nature and extent of their telephone exchange services in the state. Such a rule would put a stop to the CLECs' intentionally evasive pleadings, improve the accuracy of the Commission's decisions by forcing parties who have the best evidence to present it, and save the resources of the parties and the Commission alike.

Although wireline CLECs that compete in Louisiana have done their best to obscure the full extent of their operations, this effort at hiding the facts has not been fully successful. The CLECs' comments indicate that KMC TeleCom is in fact a wireline Track A carrier in Louisiana, as anticipated in BellSouth's Application. See BellSouth Br. at 17-20.

Regardless of wireline activity, however, BellSouth may proceed to establish its compliance with the competitive checklist, structural separation requirements, and the public interest requirement of section 271 because of facilities-based entry by PCS providers in Louisiana. Indeed, the only arguments against BellSouth's showing on this point run directly counter to the text and legislative history of the Act. Because PrimeCo, Sprint Spectrum, and MereTel are operational providers of facilities-based telephone exchange service in Louisiana, BellSouth may file under Track A. See BellSouth Br. at 8-17.

A. Comments Reveal the Presence of Wireline Track A Competition in Louisiana

The Department of Justice has concluded that Track A can be satisfied by a single carrier that provides facilities-based service to businesses and resale service to residential customers. See Michigan Order ¶ 80 n.177; BellSouth Br. at 20 n.25. The Department explained that this approach "serves Congress' twin purpose of maximizing competition in local exchange and interexchange telecommunications markets" by making Track A available when competitors "have a demonstrated ability to operate as facilities-based competitors" but find resale more attractive. Addendum to Evaluation of the United States Department of Justice at 3-4, CC Docket No. 97-121 (May 21, 1997) ("DOJ Oklahoma Addendum").

In a passing reference to its actual operations, KMC TeleCom reports that it "currently provides local service on its own network, and also resells BellSouth local exchange service" in Louisiana. KMC at 1. BellSouth has been able to fill in some of the gaps in KMC's statement. As discussed in the Reply Affidavit of Gary M. Wright, KMC is in fact providing business service over its own facilities and residential service on a resale basis, and has been doing so since before BellSouth submitted its application on November 6, 1997. Wright Reply Aff. ¶¶ 3-5. Moreover, when KMC's more than 2000 facilities-based lines are compared with its several dozen resold lines, id. ¶ 7, it is clear that KMC satisfies DOJ's predominance test.[4]

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[4] Track A also can be satisfied by the collective service of multiple CLECs. Michigan Order ¶ 85. It follows, therefore, that if multiple CLECs collectively provide facilities-based business service, and residential resale, Track A is satisfied, at least as long as the resulting service is provided predominantly over non-BOC facilities. This appears to be the case in Louisiana. ACSI confirms that its "primary" method of serving its customers is facilities-based

DOJ's approach serves the goals underlying Track A. As this Commission has stated, Track A serves as one of section 271's (many) measures of the openness of local markets. Michigan Order ¶ 85. It should be applied not so that the business decisions of CLECs can frustrate interLATA competition when the local market is open, but so that Track A entry is available whenever facilities-based competition is demonstrably possible. Id.; accord DOJ Oklahoma Addendum at 3-4. Where there is facilities-based business competition, as there is in Louisiana, the incumbent BOC has necessarily made available the necessary facilities and services to allow such entry where it is economically attractive to CLECs. That those CLECs find residential resale — or staying out of the residential market altogether — most profitable does not speak to whether the local market "is effectively open." Michigan Order ¶ 85.

B. PCS Providers Qualify Under Track A

Even if there were no Track A wireline competitors in Louisiana, BellSouth would be eligible to proceed under Track A on the basis of its interconnection arrangements with PCS providers. There is no dispute that the operational PCS providers in Louisiana are receiving access and interconnection from BellSouth, serve business and residential customers, or are

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service, and resale of BellSouth's service is used only to supplement facilities-based offerings. ACSI at 4 n.7. If ACSI in fact serves residential customers, then ASCI is itself a Track A competing provider. But even if ACSI serves only business customers, no party disputes that both American MetroCom and KMC TeleCom provide resale service to residential customers in Louisiana. See Wright Aff. ¶¶ 33, 39. And, ACSI's facilities-based business service is far more extensive than either KMC's or AMC's residential service, see id. Wright Aff. Ex. WLCE-A, WLCE-B, WLCE-C. Thus, section 271's "predominance" requirement is satisfied by either the ACSI/KMC or ACSI/AMC combination. Cf. DOJ Oklahoma Addendum at 3 (one class of customers may be served via resale "provided that the competitor's local exchange services as a whole are provided 'predominantly' over its own facilities").

facilities-based carriers within the meaning of Track A. See 47 U.S.C. § 271(c)(1)(A). Rather, CLEC arguments that entry by broadband PCS providers cannot support a Track A application all spring from a common claim: that PCS providers are not "competing providers of telephone exchange service." Id. That claim, however, rests on fundamental mistakes about what the law requires.

1. PCS Service Is "Telephone Exchange Service"

CLECs concede that PCS is "telephone exchange service" under the new definition set out in section 3(47)(B) of the Communications Act, but argue that it does not qualify as such under the older, alternative definition of section 3(47)(A). Some suggest that the FCC has so held, but that is just plain wrong. See, e.g., Cox at 18 n.41. When it addressed this issue in its Local Interconnection Order, the Commission found that PCS falls within section 3(47)(B) "at a minimum," and thus, despite its intimation that PCS also qualifies under section 3(47)(A), had no need formally to reach that issue.[5]

Indeed, the reasoning of the Local Interconnection Order makes clear that broadband PCS and comparable wireless services do qualify as telephone exchange service under the pre-1996 definition now codified as section 3(47)(A), as well as under section 3(47)(B). The Commission noted that it had found cellular service to be local exchange service in decisions dating back as

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[5] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15999-16000, ¶ 1013 (1996) ("Local Interconnection Order") (emphasis added), modified on reconsideration, 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), modified, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997), petitions for cert. pending, Nos. 97-826, 97-829, 97-830, 97-831.

far as 1986, when only the old definition of telephone exchange service (i.e., current section 3(47)(A)) applied. 11 FCC Rcd at 15999, ¶ 1013 & n.2391. The Commission also relied upon section 271(c)(1)(A)'s exclusion of cellular service from the scope of telephone exchange services for purposes of Track A. 11 FCC Rcd at 16000, ¶ 1014. Because Track A is expressly limited to telephone exchange services that are covered by 3(47)(A), this further shows the Commission's recognition that wireless services would otherwise be telephone exchange service under section 3(47)(A).[6]

MCI argues that PCS is not telephone exchange service for purposes of section 3(47)(A) because PCS providers' service areas are generally larger than wireline LECs' local service areas. MCI at 7-8. This same argument was rejected in the Local Interconnection Order as "not relevant to the statutory definition of telephone exchange service in section 3(47)." 11 FCC Rcd at 16000-01, ¶ 1015. PCS and other wireless service providers utilize interconnected switching offices in the same general manner as wireline LECs, and local wireless services have long been

[6] MCI insists that Congress actually determined cellular service would never qualify as telephone exchange service under section 3(47)(A), MCI at 8, but that would render the final sentence of section 271(c)(1)(A) surplusage. Local Interconnection Order, 11 FCC Rcd at 16000, ¶ 1014. Contrary to MCI's view, Congress cannot be presumed to draft redundant provisions. See Ameritech at 6 & nn.9-10 (citing authority that "statutory exceptions exist only to exempt something which would otherwise be covered") (quoting 2A N. Singer, Statutes and Statutory Construction, § 47.11 at 166 (1992)). Nor is there any basis for MCI's supposition that Congress had wireless carriers in mind when it excluded section 3(47)(B) from consideration under Track A. MCI at 8 n.8. This claim is not only unsupported, but also unlikely; again, Congress would not have mentioned cellular carriers explicitly if they were already excluded through other language in section 271(c)(1)(A).

considered "exchange" services.[7] The larger size of wireless exchanges, as compared to wireline exchanges, is simply immaterial for purposes of section 3(47)(A). Likewise, MCI cannot benefit from Congress's supposed intent to limit Track A to "traditional telephone exchange service provided within exchanges or exchange areas." MCI at 8; see also Sprint at 17. Although PCS uses newly assigned radio frequencies, this service is a "traditional" exchange service of the sort Congress described in section 3(47)(A).[8]

Given the language of the statute and the reasoning of the Local Interconnection Order, this Commission can only conclude that PCS is telephone exchange service for purposes of

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[7] See, e.g., Local Interconnection Order, 11 FCC Rcd at 15996, ¶ 1004 ("Congress recognized that some CMRS providers offer telephone exchange and exchange access services."); id. at 15999, ¶ 1013 ("The Commission has described cellular service as exchange telephone service.") (citing decisions); Report and Order and Order on Reconsideration, Petition of Arizona Corp. Comm'n, 10 FCC Rcd 7824, 7836 ¶ 55 (1995) (discussing DOJ conclusions regarding "cellular exchange markets"); Memorandum Opinion and Order, Applications of Craig O. McCaw, 9 FCC Rcd 5836, 5850, ¶ 20 (1994) (discussing concerns regarding acquisition of McCaw's "cellular exchange[s]" by AT&T), aff'd sub nom. SBC Communications Inc. v. FCC 56 F.3d 1484 (D.C. Cir. 1995); Notice of Proposed Rulemaking and Notice of Inquiry, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 9 FCC Rcd 5408, 5437-38 (1994) (discussing boundaries of "wireless exchange areas"). See also United States v. Western Elec. Co., 578 F. Supp. 643, 645 (D.D.C. 1983) (radio services are "exchange telecommunications services" under the MFJ); United States v. Western Elec. Co., 890 F. Supp. 1, 3-4, 10 (D.D.C. 1995) (discussing operation of cellular systems and defining "Wireless Exchange System"), appeal dismissed as moot, 84 F.3d 1452 (D.C. Cir. 1996).

[8] Sprint maintains that "traditional" telephone exchange service covered by section 3(47)(A) must be sold at a flat rate, which would exclude all measured usage plans. Sprint at 17. This Commission, however, has said that telephone exchange service need only be provided for monetary payment or something of value. Memorandum Opinion and Order, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, 12 FCC Rcd 8685, 8696-97, ¶ 17 n.64 (1997) ("Oklahoma Order"), appeal pending sub nom. SBC Communications Inc. v. FCC, No. 97-1425 (D.C. Cir.) (to be argued Jan. 9, 1998).

section 271(c)(1)(A) and thus proceed to consider whether PCS providers in Louisiana satisfy the provision's remaining criteria.

2. PCS Carriers Are "Competing Providers" for Purposes of Track A

CLECs maintain that even if PCS providers do offer telephone exchange service, they are not "competing providers" of such service under Track A because most customers do not consider PCS and wireline local service to be close substitutes. These claims ignore the history of Track A as well as the Commission's prior interpretations of section 271(c)(1)(A) and other provisions of the 1996 Act.

A variety of commenters insist that to qualify under Track A, an unaffiliated provider's telephone exchange service must be "price competitive" (ALTS at 3; Sprint at 11-12), use the same technology (MCI at 5; Sprint at 10), have the same "limitations" (ALTS at 3, MCI at 5-6), and cover the same geographic area (CPI at 1) as the Bell company's wireline service. No one, however, claims that the phrase "competing provider," which also is found in section 251(c)(3) of the Act, inherently conveys such requirements. See, e.g., MCI at 6-7 (attempting to distinguish section 251 on policy grounds). Moreover, the tests suggested by commenters are exactly the requirements — "comparable . . . price, features, and scope" — the House deleted from Track A. H.R. Rep. 104-204, pt. 1 at 8 (1995) ("House Report"); see BellSouth Br. at 14. As this Commission has recognized, it is not empowered to impose restrictions on Track A that were proposed but rejected by legislators. Michigan Order ¶ 77 & n.170.

The Michigan Order, in fact, directly confirms that scrutiny of PCS providers' prices, service terms, and territories is not appropriate under Track A. There, the Commission